

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, DECEMBER 14, 2007
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Ms. Laura Thielen
Mr. Tim Johns
Mr. Rob Pacheco
Mr. Jerry Edlao

Mr. Ron Agor
Ms. Taryn Schuman
Dr. Sam Gon

STAFF

Mr. Sam Lemmo, OCCL
Ms. Dawn Hegger, OCCL
Ms. Charlene Unoki, LD
Ms. Kaleo Paik, HP
Ms. Athline Clark, DAR
Mr. Ed Underwood, DOBOR

Ms. Tiger Mills, OCCL
Mr. Morris Atta, LD
Mr. Dan Quinn, SP
Mr. Dan Polhemus, DAR
Mr. Paul Conry, DOFAW

OTHERS

Mr. Vince Kanemoto, AG's Office
Mr. Gordon Rezentes, D-25
Mr. Stan Fujimoto, D-23
Mr. Clayton Sugimoto, D-2
Mr. Jim Anthony, E-1
Mr. Dan Hempey, E-3
Mr. Frank Hay, E-3
Mr. Richard Matsushida, E-3
Ms. Connie Clausen, E-3
Ms. Susan Staton, E-3
Mr. Ted Myers, E-4

Mr. Terry George, K-3
Mr. Colin Miwa, D-18
Mr. Christopher Harrison, D-9
Ms. May Au, E-1
Ms. Stephanie Iona, E-2
Mr. Donn Carswell, E-3
Mr. Tony Locricchio, E-3
Mr. Caine Hookano, E-3
Ms. Linda Collins, E-3
Mr. Duncan Ka'aihue, E-3
Mr. Keola Lindsey, I-1 to I-7

Mr. Steven Strauss, K-5
Ms. Bo Blair, K-5
Mr. Jeff Chandler, K-5
Ms. Leah Suesen, K-5
Mr. Read Spencer, K-2
Ms. Susan Whitel, F-3
Ms. Marti Townsend, F-3
Ms. Miwa Tamanaha, F-3

Mr. Randy Vitousek, K-5
Ms. Caren Diamond, K-5
Ms. Wendy Wickman, K-5
Ms. Heidi Guth, OHA, K-5
Mr. Jeff Straund, F-1
Ms. Aulani Wilhelm, F-3
Ms. Margaret Akaminie, F-3
Mr. Ross Smith, DOT Aiport

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1 Amend Minutes of October 26, 2007, Item K-1.

Unanimously approved as amended. (Johns, Agor)

Item A-2 Minutes of November 16, 2007.

Member Taryn Schuman recused herself.

Withdrawn. Not ready for this meeting.

Item K-3 Conservation District Use Application OA-3433 for the Kaneohe Ranch & Castle Foundation Administrative Complex Located at Castle Junction, 1199 Auloa Road, Kailua, Oahu, Kaneohe Ranch and Castle Foundation - TMK (1) 4-5-35:003

Member Sam Gon recused himself.

Sam Lemmo, administrator for Office of Conservation & Coastal Lands (OCCL), reported background. The main purpose is to create and consolidate additional administrative offices for the Castle Foundation and Kaneohe Ranch in one location. Staff recommends the Board approve the application subject to 19 conditions.

Terry George, Vice-President and Executive Director for Harold K. Castle Foundation, stated he is not employed by Kaneohe Ranch. He informed the Board of the foundation's history and explained that by co-locating near Kaneohe Ranch's existing building the Castle Foundation would reduce their carbon footprint, would increase efficiency by co-rotating with Kaneohe Ranch, and maybe benefiting from some of Kaneohe Ranch's staff time. The site is easily accessible from Kaneohe and Waimanalo. He cited organizations benefiting from Castle Foundation's grants and that there is sufficient staff parking.

Unanimously approved as submitted. (Johns, Schuman)

Item D-25 Mutual Cancellation of General Lease No. S-4612 Issued to Del Monte Fresh Produce (Hawaii) Inc. for Pineapple Cultivation Purposes, Waialeale, Oahu, TMKs: (1) 9-4-12:01, 02, 03.

Morris Atta, Acting Administrator for Land Division, informed the Board that Del Monte is shutting down in central Oahu and will proceed with closing of operations. He reported staff has a couple potential applicants interested in the property.

Gordon Rezentes, Del Monte representative, concurs with the conditions of the recommendation and stated he is here to answer any questions.

Unanimously approved as submitted. (Schuman, Gon)

Item D-14 Amend Prior Board Action of January 28, 2005, Item D-8, Grant of a 55-Year Non-Exclusive Easement for Seawall Purposes to Kauilani, LLC, Honolulu, Oahu, TMK: (1) 3-6-02:02 seaward.

Morris Atta representing Land Division reminded the Board of this prior Board action from January 28, 2005 and requested to amend it by increasing the square footage.

Unanimously approved as submitted. (Johns, Schuman)

Item D-10 Acquisition of Government Lands and Set Aside to (1) Department of Transportation for Manifested Cargo and Passenger Operations, and (2) Department of Business, Economic Development and Tourism, Foreign-Trade Zone Division for Foreign Commerce, Portion of Kaakaukui, Honolulu, Oahu, TMKs: (1) 2-1-15:por. 09, 19, 15, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 42 & 46.

Morris Atta of Land Division explained that Department of Transportation (DOT) requested that the purposes stated for the acquisition is to change from "manifested cargo and passenger operations" to "maritime or maritime related purposes" because DOT felt that the use as described in the submittal is too restrictive for the type of activities that they do. He believes there is no objection to amend submittal.

The Board and Deputy Attorney General took issue of the changing of the purpose as listed in the agenda and to possibly re-agenda the item.

Chair Thielen suggested taking this item up later in the meeting and for Mr. Atta to contact DOT to find out what they want to do.

Item D-18 Enforcement of Violation of Unencumbered Public Lands, Unauthorized Landscaping and Removal of Sand and Plants on State Land by David and Maureen Cross, Kailua, Koolau, Oahu; TMK: (1) 4-3-17:33.

Written testimony was received from Colin Miwa.

Morris Atta, representing Land Division, conveyed background and owners request to defer this matter because they want to present their defense. Staff has no objections.

Mr. Colin Miwa, attorney for the homeowners, requested for a deferral because the homeowners live on the mainland.

Chair Thielen asked if this Board agrees to a deferral would we have Mr. Miwa's commitment that his clients are not going to do any other action on this area until we speak to them at the next meeting. Mr. Miwa answered in the affirmative.

Deferred. (Johns, Schuman)

Deferred to the January 11, 2008 Land Board Meeting. Respondents reside out-of-state and requested the opportunity to present their defense in person before the Board in January, The Board agreed to defer the matter.

Item D-23 Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Access and Utility Purposes and Issuance of Construction and Management Right-of-Entry, Waianae, Oahu, Tax Map Key: (1) 8-5-028:042 por.

Written testimony was received from Kali Watson.

Member Tim Johns recused himself.

Morris Atta, of Land Division, spoke of applicant's request for an additional location change and that he does not have any additional information.

Stan Fujimoto representing Hawaii Housing Financing Development Corporation (HHFDC) explained this easement is to benefit emergency, transitional and affordable housing project on their property adjacent to the school site. HHFDC was informed recently of an alternative, more beneficial alignment and suggested an amendment to the approval to state "for alternative alignment acceptable to HECO, HHH, DOE and DLNR."

There was discussion regarding the realignment of the TMK.

Chair Thielen asked Mr. Atta to work with staff on this.

Unanimously approved as amended. (Schuman, Edlao)

In response to requests from the Hawaii Housing Finance Development Corporation and Hawaiian Electric Company, Inc., staff proposed and the Board approved changing the consideration amount to "gratis" and incorporating a new alignment location for the easement in the Board action by adding the language"...or at an

alternate alignment location to be determined by the Applicant that is acceptable to Hawaiian Electric Company, Inc., Hawaii Coalition of Christian Churches, Department of Education, and the Department of Land and Natural Resources,” as may be appropriate throughout the submittal. Otherwise, the Land Board approved staff’s recommendations as submitted.

Item D-5 Approval of Lease of Private Property with Leroy Ridgeway Jr. and Ms. Faviola Ridgeway on Behalf of the Department of Health, Clean Air Branch for Air Monitoring Purposes, Keahialaka, Puna, Hawaii, TMK: (3) 1-3-28:portion of 38.

Morris Atta, acting administrator for Land Division, described submittal background and that staff’s standard lease terms will cover liability.

Unanimously approved as submitted. (Pacheco, Edlao)

Item D-17 Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:40.

Morris Atta, representing Land Division, addressed the Board that this is a routine request and gave background.

Chair Thielen asked is this requesting the Board for the lease for intensive agricultural purposes and not for primary residential purposes. Mr. Atta affirmed that.

Unanimously approved as submitted. (Schuman, Pacheco)

Item D-9 Amend Prior Board Action of September 28, 2001, Agenda Item D-17, Grant of Perpetual, Non-Exclusive Easement to R.R. Midkiff Luakaha Family Limited Partnership and Elizabeth Midkiff Myers, Trustee Under that Certain Unrecorded Revocable Trust of Elizabeth Midkiff Myers dated April 24, 1989, as Amended, for Waterline, Reservoir and Fire Pump Station Purposes at Nuuanu, Oahu, TMK: (1) 1-9-07:por. 02.

Morris Atta of Land Division reminded the Board of prior Board action on September 28, 2001 where easement documents were approved, but never signed. Since then there were changes. Staff recommends correcting that oversight and including the changes.

Christopher Harrison of Cades Schutte clarified there is a mistake in the submittal stating that the condominium project is not being created. The easement documents were prepared, but when staff reviewed it they noticed it only identified one of the sub-division lots which should be six lots. This submittal is to correct that. Since then, a homeowners association was formed and they requested the easement be granted to the homeowners association instead of the homeowners.

Unanimously approved as submitted. (Johns, Pacheco)

Item D-2 Issuance of Right-of-Entry Permit to U.S. Army Corps of Engineers on State Unencumbered and Encumbered Lands, Islands of Oahu, Maui, Kauai; TMK: (1) 3-9-11:7; (1) 4-1-14:1, 9, 10; (1) 5-2-2:1; (1) 5-6-1:2; (2) 2-1-1:3; (2) 5-8-15:11, (2) 6-1-1:2; (4) 1-5-1:1; (4) 3-9-1:2; (4) 4-2-1:1, 2; (4) 4-4-1:1, 2; (4) 4-6-1:1; (4) 5-4-1:1.

Morris Atta representing Land Division addressed the Board on the submittal background.

Clayton Sugimoto, contractor for Army Corp of Engineers, stated he is here to answer any questions.

Unanimously approved as submitted. (Schuman, Johns)

Item E-1 Approval to Issue Three (3) Revocable Permits at Ahupua'a 'O Kahana State Park, Ko'olauloa, Oahu for Residential and Agricultural Purposes TMK: (1) 5-2-02: por.1

Dan Quinn, administrator for State Parks, briefed the Board. 1) Adella Johnson permit is to continue the land tenure and staff is working to reconfigure the survey which was done erroneously, 2) Lena Soliven is along the stream side and is eligible for one of the new leases, and 3) For an existing agriculture RP (revocable permit) along the side of the valley near the Huilua fishpond for Erlinda Villanueva.

May Au supports this submittal.

Jim Anthony, resident of Kahana, addressed the Board on the Lena Soliven RP and presented a map and history of circumstances. In 6 months Ms. Soliven will be moved to one of the available lots. The Department decided that she will be allowed to continue living in Kahana. Ms. Soliven came in as a squatter when her aunt was moved out. The Department condoned this and now Ms. Soliven is morphing into a general lessee. He recommended the Board ask staff to look at Ms. Soliven's case and allow her to build at the site she is at. That way staff doesn't have to move her to some place else.

Mr. Quinn spoke on the issue of allowing structures to remain down along the stream or the highway near the ocean. He thinks staff was not in favor of the two that were permitted to stay on the beach. Staff maintained the same position that they would like to have that area of the park open for general public recreation. There is no current master plan for the park and the general philosophy is that general public lands should be for general public use. The bulk of all the houses are clustered up the valley and the intention was to relocate the residents out of the area most likely for public recreation. He suggested addressing this at a later meeting if the Board wishes to entertain it.

Chair Thielen inquired is Ms. Soliven willing to move from the current location she is in to the one being proposed.

Mr. Quinn affirmed. Staff would have to come back later for a lease.

Unanimously approved as submitted. (Johns, Schuman)

With the understanding that when staff comes back with the Lena Soliven issue you will discuss different potentials of staying or moving, but the RP will continue on in the existing place for a year because she will be allowed to stay during the course of construction. The lease to be completed in 6 months.

Item E-2 Request to Enter into a Revocable Permit for the Operation of the Kokee Concession, Kokee State Park, Kauai

Dan Quinn of State Parks communicated request background. He reminded the Board staff extended the lease over the last calendar year. Staff is in the process of wrapping up the master plan and EIS which will help define the parameters for what the concessionaire will be able to do in the future. Once that is done, staff will go out to bid for the operation. Staff is reviewing the final draft of the EIS today. As soon as that is completed, the consultant reviews it with extensive community input. With any changes, staff will move to publish the final EIS and hope to have it done the first half of the calendar year. That will set up the framework for Kokee Lodge.

Stephanie Iona representing the Kokee Concession appreciated the extension for the sake of the operation and employees.

Unanimously approved as submitted. (Agor, Gon)

Item E-3 Request Continuance of 96 Revocable Permits Issue for Recreation-Residence Use in Koke'e and Waimea Canyon State Parks, Waimea, Kaua'i

Written testimony was received from Representative Roland Sagum, Senator Gary Hooser and Canen Ho'okano.

Dan Quinn representing State Parks reminded the Board granted RPs (revocable permits) last year and this is a request to do the same with a couple of changes. Staff is asking to approve this as a 6 month period as opposed to 1 year. Staff did a special provision to allow for a 90 days notice of termination on the last one. This time there will be a standard 30 day written provision. He reported that there was alleged criminal activity which occurred there and asked the Board to approve a 5 day notice of termination of cancellation in the event of criminal activity in the cabins. He explained the other conditions.

Member Johns recommended waiting for a conviction in order to tie this to criminal activity.

Mr. Quinn agreed and described the three alleged incidences of criminal activity. Two were not the permittee and one was. Staff wants to make clear illegal activities will not be tolerated and would result in termination of the permit.

Chair Thielen suggested this is irrelevant to the 6 month extension, but to make sure for the new lease terms, to look at the federal laws; property is forfeited in the event of illegal drug use or sales. Staff could look at what language and be able to sustain review for that type of condition. But, if there's a 30 day provision for these 6 month extensions it maybe less essential. If in 30 days staff is able to terminate it in writing under this RP for a 6 month extension it may be less necessary, but in future leases after an auction where it's a long term lease then it's going to be more important to look at the language to stop this illegal activity.

Discussion to delete condition #2 and keep 1, 3, 4, 5, 6.

Mr. Quinn explained there were several legal challenges which caused a delay. Staff conferred with Office of the Attorney General to proceed with the next step. There was considerable public input for the method of disposition for the Board's reference. The Board's approval was to go out with a standard auction. The Division's preference is to move with an auction with a preference for local residents which the Board considered before when looking at a drawing type disposition of the properties. Staff would come back to the Board with any changes and go back to Kauai for any hearing.

Mr. Dan Hempey, attorney representing some of the leaseholders, informed the Board that they lost the case in the Kauai circuit court and is now on appeal asking for compensation of the cabins. He asked to modify the submittal to 90 days and cited examples of cabin ownership and history. Mr. Hempey expressed to the Board his clients' desire to meet with the Board prior to any action. He requested not to accept going to auction after 6 months. A 30 day notice would be extremely difficult because of moving problems.

Member Agor asked will this be brought to Kauai for consideration in the next 6 months.

Mr. Quinn answered in the affirmative.

Member Johns inquired why 30 days versus 90 days.

Mr. Quinn replied we're coming to the end of the period.

Frank Hay, leaseholder since 1975, testified that he bought his cabin in the free market. A free market works and an auction does not, referring to the 1985 auction and described it. More than 50 Hawaii families lost their cabins. He prefers a term of 1 year rather than 6 months. Mr. Hay suggested the Board review that master plan to discuss the historic

fabric, cultural landscape, and environmental impacts prior to making any final decision. He also suggested the Board reconsider the terms to keep the permit as is, with a 1 year term at a month to month basis, and a 90 day notice so as not to repeat the 1985 mistake.

Member Agor inquired this action allows the leaseholders to stay on for 6 months and prior to that staff has committed to bringing the issue back to Kauai. Say in 4 months? Then there is no need to extend this for another year.

Member Johns asked will the auction be brought back to the Board to consider.

Mr. Quinn explained the auction was approved as a standard auction. Staff believes if the Board is going the route of a local resident preference staff needs to get Board approval.

Member Johns added or bring back a re-examination of the auction within the next 4 months.

Mr. Quinn stated that it might take longer to implement.

There was discussion of auction timing.

Chair Thielen informed the Board of discussions with the Attorney General's (AG) Office regarding concerns that if this was put to auction there would be international and national interests in the cabins. It was discussed whether staff could have conditions on whom is eligible to bid under the auction, limiting it to Hawaii State tax payers because they support our State Parks. It was suggested to give preference to Kauai residents for a number of cabins or for a time period. Also, place restrictions on vacation rentals because of concerns. Staff is exploring those concerns with the AG's Office and will come back before the Board on the terms of who would be eligible. The auction is one reason for 6 months as opposed to 1 year. It would be better to have the auction after the cabins are vacated. If the Board approves the amended terms of who would be eligible for an auction it would take place after the 6 month period is completed.

Member Johns inquired four months will come, the Board makes a decision, and maybe in 2 months get an auction together, people will leave the cabins, and if those people are successful at the auction they will move back in. Is that the correct process?

Mr. Quinn replied affirmatively.

Mr. Hay suggested making the revocable permits for one year to show support to the Kauai community. He alerted to the problems of vacated and un-maintained cabins. He cited Malaekahana and Koke'e examples. Mr. Hay recommended reconsidering that decision.

Member Johns agreed with Mr. Hay on the 6 months vs. 1 year. He clarified there is a difference compared to other lands that DLNR manages. It's very hard to properly manage residential or quasi-residential use in a State Park because its very time

consuming and it takes a lot of resources. It's challenging for the Department to allow residential use within State Parks although historically it may have been done. There is a difference between the Board giving a lease with an RP to someone farming agricultural land where he can exclude the public versus dropping residential or quasi-residential use in the middle of a public park that everybody uses.

Mr. Hay agreed then added Koke'e is a historic district and he believes it deserves extra consideration.

Chair Thielen agreed. She pointed out one of the things this Board struggles with is they represent all the residents of the State of Hawaii. There is interest from other people to have an opportunity to enjoy that resource. The Board has to consider that.

Don Carswell, a Koke'e leaseholder, noted that the cabins generate almost \$300,000 which maintains all 7 State Parks on the west side (of Kauai). He hopes for an increase in the rent to benefit the State. Mr. Carswell stated vacating the cabins is a lot of work and there are problems with enforcement. If there was the option to vacate today and auction tomorrow that might work. Based on the past auction, ½ of the occupants might get their cabin back, but there is a better way.

Chair Thielen recommended Mr. Carswell bring his plan before the State Parks Division in the next few months.

Tony Locricchio, a leaseholder and attorney, reported currently there is no litigation. The case in Kauai was dismissed without prejudice meaning the leaseholders could bring it back again. He cited the 6 month deadline set by the Department ignores the new development since the Chair came on board. In regards to the preference of Kauai or Hawaii residents, it is unconstitutional to restrict this (auction) to the island of Kauai. Based on the Federal constitution, the Board cannot restrict a State facility to State residents. Mr. Locricchio added the Legislature can't review the revocable permit situation in 6 months. He noted the Department can't solve the water problem and recommends this Board review this which will require more than 6 months. Staff's position is an auction is a valid and correct way to go. The problem is at the auction within the 6 months the State has to make disclosure to people who will bid.

Richard Matsushida, director of outdoor ministries of the United Methodist Church, described their involvement with the Koke'e camp. He concerned over the month to month lease, issues with water, and uncertainty of the future.

Member Agor inquired if this property falls under a non-profit.

Mr. Quinn believes it does. There are 5 non-profits that the Board approved, under their authority, to enter into direct negotiations and this is one of them.

Chair Thielen summarized the Board is given authority to do direct negotiations with non-profit organizations. This revocable permit would extend the lease to a 6 month period during which the Division can do the direct negotiations.

Mr. Matsushida explained he was confused by the letter and thanked the Board.

Canen Ho'okano, a leaseholder from Kauai, related his family background. He testified that he has been to all these meetings for the past 6 years and he understands a half million dollars was spent on the master plan that everyone is opposed to. Mr. Ho'okano warned some families and multi-millionaires want 10 cabins for themselves. He explained that the Kauai community has expressed what they've want for the past 6 years, but no one is hearing them. He provided a DVD of the Governor's advisory committee meeting which Peter Young attended. He expressed the lost of cultural, historical, kama'aina families and environmental issues. Mr. Ho'okano fears that none of the Kauai residents will have a chance because of all these multi-millionaires coming in. He asked the Board to reconsider on the 6 month revocable permit.

Chair Thielen reported the Board will be coming to Kauai to make that decision and she suggested folks bring their plans then.

Connie Clausen a leaseholder of Kauai asked the Board to extend the six months to 1 year with a 90 day notice to support Kauai. She is glad the Board is coming back to Kauai and explained the water problem.

Linda Collins a leaseholder and member of Historic Hawaii Foundation hoped there is a commitment to the preservation of the historical landscape at Koke'e. She believes the vacate provision will cause the cabins to deteriorate fast and she reiterated the problem of moving out of the cabins. Ms. Collins stated she doesn't understand why the State would want to take ownership of those cabins because of the liability and that they are hard to maintain. She reiterated 6 months is not enough time.

Member Agor explained staff will be bringing this to Kauai in the next 4 months. The Board will make a decision on how to dispose of the cabins and develop a process to dispose of the cabins. At that time the process maybe extended.

Susan Staton a leaseholder reiterated the water issues and the moving problem. She described the problem of neglect.

Duncan Ka'aihue representing Mariah Kahanu Parks Trust reported he represents a dozen Koke'e families. He reiterated six months is too hard. A year is satisfactory especially when dismantling a cabin.

Member Agor moved to accept staffs' recommendation with a couple amendments. Item #1 change "subject to 30 days" to "subject to 90 days written notice." Eliminate item #2. Member Johns second it.

Member Agor noted the purpose of this extension is to come to a resolution on how to dispose of the cabin. Staff directed this will take place before the six months. Once the decision is made the process of disposal of the cabins will be discussed. He described the problem of the leaseholder dismantling the cabin, going to bid, and then having to come back with the cabin. He doesn't agree with removal of the cabins.

Discussion on logistics of timing.

Member Agor withdrew motion and declared amend Item #1 to "month-to-month basis not to exceed 1 year subject to a 90 day written notice." Omit Item #2.
Member Johns second.

Mr. Quinn made the Board aware that if staff omits item #2 and there is a 90 day provision and if the criminal activity is final then there will still be a 90 day restriction on cancellation of those RPs.

Chair Thielen explained there are terms for the revocable permits. For Item #2 – including the standard terms in revocable permits which prohibit criminal activity.

Mr. Quinn asked about the 5 day notice portion.

Discussion on question of due process and whether AG approved language.

Mr. Quinn stated he would like to have the ability for an earlier cancellation rather than 90 days. The standard 30 day, if we could reference that in Item #2 as oppose to keeping it to 90 days or omit #2.

Member Johns suggested 30 days for a violation of any permit conditions as oppose to 90 days at the discretion of staff.

Mr. Quinn agreed that is a reasonable way to do it.

Chair Thielen recommended substituting a new item #2 to say "the standard revocable permit conditions would be included and that there would be a termination on 30 days written notice for a violation of the permit conditions."

Member Johns added subject to the AG's review on the appropriate language.

Discussion on violation of conditions.

The Board:

Amendment to staff's recommendation:

Amend #1 to say "a month-to-month basis not to exceed 1 year subject to a 90 day written notice." Substitute new #2 "the standard revocable permit

conditions would be included and that there would be a termination on 30 days written notice for a violation of the permit conditions.”

Unanimously approved as amended. (Agor, Johns)

11:09 am Recess was called.

11:17 am Reconvened.

Item E-4 Annual Renewal of Revocable Permits (RPs) on the Island of Kauai and Oahu

Dan Quinn representing State Parks reported staff has no changes.

Ted Myers stated he has no testimony.

Unanimously approved as submitted. (Pacheco, Gon)

Item I-1 Request for Approval to Enter into a Reburial Agreement with FRC Waikiki, LLC for the Human Skeletal Remains Reinterred on their Property at Waikiki Ahupua'a, Kona District, Island of O'ahu at [TMK (1) 2-6-13: 1,3,4,7,8,9,11,12]

Item I-2 Request for Approval to Enter into a Reburial Agreement with WBC CPR, LLC for the Human Skeletal Remains Reinterred on their Property at Waikiki Ahupua'a, Kona District, Island of O'ahu at [TMK (1) 2-6-002: 1,2,3]

Item I-3 Request for Approval to Enter into a Reburial Agreement with BBC Corporation for the Human Skeletal Remains Reinterred on their Property at Wai'ala'e Ahupua'a, Kona District, Island of O'ahu at [TMK (1) 3-5-004: 015]

Item I-4 Request for Approval to Enter into an In Situ Burial Agreement with Falko Partners, LLC for the Human Skeletal Remains Found on their Property at Waipake Ahupua'a, Ko'olau District, Island of Kauai [TMK (4) 5-1-03:06]

Item I-5 Request for Approval to Enter into a Reburial Agreement with Jeffrey Borges, Martine Borges and Troy and Jennifer Lindell for the Human Skeletal Remains Reinterred on their Property at Waipouli Ahupua'a, Kawaihau District, Island of Kauai at [TMK (4) 4-3-009:049]

Item I-6 Request for Approval to Enter into a Reburial Agreement with PMK Development, LLC for the Human Skeletal Remains Reinterred on

their Property at Nu'uanu Ahupua'a, Kona District, Island of O'ahu at [TMK (1) 2-1-009: 11, 13, 18 and 2-1-010: 001, 004]

Item I-7 Request for Approval to Enter into a Reburial Agreement with John and Deborah Mullins for the Human Skeletal Remains Reinterred on their Property at Malaekahana Ahupua'a, Ko'olaupua District, Island of O'ahu at [TMK (1) 5-6-001:018]

Kaleo Paik representing Historic Preservation Division (HP) thanked the Board for giving HP the ability to record these submittals with the Bureau of Conveyances. She presented all seven burial agreements as one and explained the process. She described each item in detail. The Allure and PMK projects both took iwi kupuna who weren't part of their projects and were amicable at reducing HP's inventory.

Keola Lindsey of Office of Hawaiian Affairs, Native Rights and Culture Division commended HP's staff for their proactive steps in providing perpetual protection for these iwi kupuna. He noted these past few months has seen the most in situ and burial agreements come before this Board in the entire history of the HP Division which is a testament to the HP staff's hard work. He expressed his thanks.

Member Johns thanked Mr. Lindsey and his staff in helping HP's staff.

Member Gon expressed he was pleased and made a motion. Member Johns second.

Chair Thielen requested Ms. Paik to convey the Board's appreciation to the two property owners who agreed to accept iwi kupuna.

Unanimously approved as submitted. (Gon, Johns)

Item K-5 Request for a Deviation from Conditions Previously Approved by the Board of Land and Natural Resources Prohibiting Rental and/or Commercial Use on 14 Conservation District Use Permits for Single Family Residences at Haena, Island of Kauai, Counsel Randy Vitousek - TMK: (4) 5-9-002:018 Ann C. Harthorn/Edwin Cryer; (4) 5-9-002:021 Gary Bart; (4) 5-9-002:022 Apolonia & Gary D. Stice; (4) 5-9-002:035 Marcia-Toro/Carmen & Charo Rasten; (4) 5-9-002:039 Caroline Simpson; (4) 5-9-002:041 E. Brian Smith; (4) 5-9-002:043 Barbara & Stephen Baker; (4) 5-9-002:044 Udo Helferich; (4) 5-9-002:050 James S. Greenan; (4) 5-9-005:051 Diane & Willi Faye/Lindsey C. Faye/Diane D. Faye; (4) 5-9-002:061 Elizabeth Taylor Tiernan/William Van Dyk; (4) 5-9-003:046 Pieter S. Myers; (4) 5-9-005:021 Caprise & Mark Moran; and (4) 5-9-002:052 Nan Guslander/Whit & Hillary Preston

The Board may go into executive session pursuant to section 925(a)(4),

Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to "the board's powers, duties, privileges, immunities and liabilities" regarding the request for deviation from the prohibition against rental and/or commercial use of the subject properties.

Written testimony received from Roy Vitousek for Haena Hui Hou and Barbara Robeson of Hanalei-to-Haena Community Association.

OCCL written responses distributed by Sam Lemmo.

Sam Lemmo, administrator for Office of Conservation & Coastal Lands, informed that he received a letter from the land owners' counsel and that the Board should have a copy. Mr. Vitousek's December 12, 2007 letter discusses the staff report (submittal). Mr. Lemmo provided a response from staff's perspective on each one of Mr. Vitousek's concerns which he just passed out. He felt it needed additional discussion. This is a request for a deviation from conditions of previously approved conservation district use application. This is a request for a deviation from the condition that prohibits the use of single family residences for rental or other commercial purposes. That is what the request for a deviation is before us today. The deviation request was filed with OCCL on December 10, 2007 representing 14 land owners. However, there is a longer history behind this issue. Staff has provided the summary of the chronology which began in March of this year when we sent notices to homeowners in Haena whom we felt were using their residences for unauthorized commercial purposes. So now it's evolved into what is before you today which is a request for a deviation that they can't do rentals for commercial or what have you. The report indicates the CDUA has been issued for each of the parcels in question and the one that is underlined is the specific CDUP that prohibits the use of the residence for commercial or rental purposes. There's a background on geology, geography and Hawaiian history and culture.

Member Johns: So Sam the condition is in the CDUP? There are no additional agreements that were signed by any of the landowners.

Mr. Lemmo: Yes. Not that I know of.

Member Johns: So strictly from the CDUP is what we are talking of. Ok.

Mr. Lemmo: And then basically staff provides a discussion of counsel's request for a deviation and in the rules is a section in the rules that which is referred to as Section 13-5-42(a)(c) which says that you can request a deviation from a condition of a permit, but you have to discuss the deviation in light of 4 criteria. And the 4 criteria are

1. the deviation is necessary because of the lack of practical alternatives,
2. the deviation shall not result in any substantial adverse impacts to natural resources,
3. the deviation is not inconsistent with the public health, safety, or welfare, and
4. does not conflict with the objectives of the subzone.

Staff provided you with an explanation of why we feel a deviation should not be granted. It hasn't met the criteria listed in the rules for granting deviations. And finally, there was a recommendation made by staff to deny the request for a deviation. On page 18, for 2 main reasons, the main reasons are that many of the landowners; he shouldn't say for all of them, it's clear that they are using the residences for commercial rental purposes that does violate the condition of the permit. We feel that the approval of the deviation would circumvent the statute in the rule.

One of the issues that it mentioned in the deviation section is "failed to secure a Board approval for a deviation before such a deviation occurs constitutes cause for permit revocation." So really we should be sitting here talking about a revocation perhaps and not a deviation. But we felt we wanted to be reasonable so we asked the owners to simply cease and desist from doing the rentals. We gave them a date and they were given this information 6 months ago. So we wanted to resolve the issue amicably and unfortunately we haven't been able to do that. The second reason why we don't think the deviation should be approved is because we believe that this rises to the level of a new use and application. No application has been filed. There is no EA. There has been no public hearing held. We have nothing before us that suggest this is an appropriate use of conservation lands. So that's the staff report. As I said, I wrote some notes on Mr. Vitousek's response to staff report. Would you like a minute or two or would you like to talk about anything I just...

Chair Thielen: I think you should go ahead and go through the whole thing and then if people have questions for staff we'll do that then we'll have public testimony.

Mr. Lemmo: 1. The first main point by counsel takes issue to the fact that the first 10 pages of staff report is devoted to the issue of geology, geography and culture. And how we do not show how these matters are relevant to the issue pending before you.

And my response was, you can see it in my letter, that it is customary for staff to provide background information on these matters. The purpose of this introduction is to highlight some qualities, natural resource, environmental qualities that are unique to the Haena area. This is consistent with our past practice. Mr. Vitousek's request for a deviation has no discussion of the environment, no discussion of the cultural issues, there is no context for it, and there is no discussion, analysis or mitigation of the long term consequences resulting from vacation rentals. We did talk extensively about cultural issues, that's true, but we wanted to highlight the fact that these issues should not go unnoticed. The burden is on the petitioners to show us these things. Not us. We're here to judge whether or not they met the spirit of the law.

2. The "no rental" condition does not protect natural resources.

I do not agree with that. The resources at Haena are currently being impacted by tourism. Haena State Park has an estimated 750,000 visitors last year and is the third most visited park in Hawaii. These conservation lands lay in-between the park and urbanized areas of Haena, Wainiha and beyond which provides a nice buffer that could help alleviate some of the visitation pressures we are currently experiencing in the park. The conservation

district of Haena was never intended for short term vacation rentals. The owners received or previous owners received permits to use these parcels for single family residential use. I've always thought that getting approval to use conservation land is a privilege not a right. Now they've gone and turned these into a quasi-resort use, short term vacation rentals. We are simply trying to enforce the spirit of the rule. The issue that does not have an impact on natural resources, as I said I don't agree with it. This change has potential to place tremendous strains on the impacts on the natural and cultural resources of the area including Haena State Park - the marine resources, reefs, and the cultural resources of the areas. Tourists behave differently in terms of how they perceive and interact with our natural environment. The impact of tourism on natural and cultural resources results not only from the development of tourism infrastructure, but also from the tourists themselves possibly overusing or misusing the resource. Hanauma Bay as an example.

Chair Thielen: Sam, I'm going to ask you to summarize because we have three people here from Kauai who have a plane to catch. I want to make sure we get their testimony in.

Mr. Lemmo: Ok. 3. Basically, Mr. Vitousek raises the 1998 discussion draft. I don't see how that benefits him since the discussion draft says that we should not approve transient vacation rentals.

4. He says that a further EA and CDUP are not required.

They kind of discussed that issue why they are.

5. He states that this is not a commercial purpose.

I don't understand how he can say that when it's clearly a commercial use.

7. He's requesting some other courses of action to resolve the matter.

a. He's asking to track the county rule and align our process with what the county processes is going to be.

That is difficult because we regulate these issues statewide. We shouldn't align with the county because different counties might do it differently. Plus, the county rule, it's unsure whether they are even going to allow any kind of short term vacation rentals in this area.

b. Applying for a subzone.

You can apply for a subzone, but first you got to resolve the violations.

c. We would like to see the issue continued for a year.

I'm not sure how this can be justified because they are violating the law everyday that they take money for the vacation rentals.

Member Johns: Sam, the definition of commercial use and the prohibition against all rentals, so that means somebody couldn't rent it for year to year? Year to year lease?

Mr. Lemmo: Technically, that would...constitutes...

Member Johns: Enforced staff too?

Mr. Lemmo: Yes.

Member Johns: So any rental then would be considered a violation of that provision. It's not just...

Chair Thielen: I think we have to go back to the AG's office to determine whether residential means a commercial prohibition because even if you own your residence, you don't own it the bank owns it, you're paying mortgage on it. So there is a difference between primary residence and short term rentals.

Member Johns: And that's where I was going. Is it one year, six months, one month, one week, one day, one hour – where does it shift to commercial. I'm just asking how do we determine that?

Mr. Lemmo: I defer to the Chairperson. I thought if that you were exchanging money, that you're taking money from someone using your home that would constitute - that would meet the definition of commercial use under our rules.

Chair Thielen: Again, I think we have to go back to the AG's office on that. I know there is case law on because local jurisdictions are dealing with this issue, when does something count residential and when does something count as short term. Month-to-month has been the delineation line for our jurisdiction as well as others.

Member Johns: Anything greater than month-to-month is considered residential and not necessarily commercial.

Mr. Lemmo: I've heard that's a good dividing line.

Member Agor: Kauai County defines it as that.

Chair Thielen: There are a number of people here to testify. There are 3 people who signed up who noted they are from Kauai and have a flight back to Kauai is there anybody else? Jeff Chandler, Leah Suesen and Caren Diamond - is there anyone else here who has a flight back? Bo Blair. Any questions for staff?

Member Johns: We need to go into executive session, but is there an opportunity for a contested case on this particular Board action?

Vince Kanemoto: Not for denial of a deviation. We can discuss that if you want.

Member Johns: That's what's in front of us today, is a denial of a deviation.

Chair Thielen: If there's a legal question about this then perhaps we need to go into executive session and if it's something that may address some of the comments that may be coming before us we really want to time it before the testimony rather than after.

11:45 am Adjourned for Executive Session pursuant to 92-5A4 to discuss its legal rights, duties, privileges, and obligations relating to this matter with our deputy attorney. (Johns, Pacheco)

12:20 pm Reconvened.

Chair Thielen: Mr. Strauss would you like to make your presentation on behalf of your client?

Steven Strauss: Certainly, I'm wondering if at the outset if the Board has made a determination with regard to whether it thinks it's facing a contested case potential now or not that may have an impact on how I address the Board.

Chair Thielen: Our understanding there is no right to a contested case hearing for the denial of a deviation.

Mr. Strauss: Ok. Thank you. Good afternoon. My name is Steven Strauss, I represent Mr. and Mrs. Glenn Fry. They are the owners of TMK: 45902:36 and this parcel is adjacent to certain parcels that are owned by some of the petitioners here. On behalf of my clients I support the department's recommendation that the petition be deferred until the completion of the pending enforcement action. I'm not sure if that's still the position of the department, but I read that in one of the statements that was available to me on line. If not deferred than it should be denied. First its' noted by the department rule 13-5-6(c), precludes consideration of requested proceeding or change in permits. In this case we argued it includes a deviation while violations are pending. Although the petitioners challenged their respective permit conditions there is little doubt they are in violation.

Second I believe the petition is defective in that it inadequately addresses the existence or lack thereof practical alternatives. The first alternative that was lightly touched on by Mr. Vitousek's admission is compliance that is an alternative available to each of these land owners. Mr. Vitousek points out that loss of rental income would likely result, but true, but that is not a deprivation of the permitted use of the parcels as single family residences. And I further note that Mr. McCalla, the successor to Mr. Greening and this is in regard to TMK: 45921:51 leased in an affidavit submitted to the Board. It has adopted compliance as a practical alternative. So at least one of these land owners is saying "yeah, I can comply, it's an alternative to me." The second alternative has already been discussed which is a district boundary amendment or a subzone request. And a third alternate, it seems to me, is the filing of a declaratory relief action in circuit court. The petition is, after all, is really more a challenge to the validity of the permit condition than it is a request to deviate from the condition. It's really saying, basically saying it's invalid and as a result you should then deviate from it. Circuit court provides under release statutes 32-1 an opportunity for these landowners to go directly to court in my view. So there is another alternative.

To the extent the Board is inclined to grant the petition today I'd be compelled to seek the contested case on behalf of my clients to the extent that Mr. Vitousek seeks a contested

case with regard to any denial of the petition. Although, I understand that is not available, but you may still seek that. I would request on behalf of my clients to participate as a party in such a contested case. Thank you.

Member Pacheco: Just to clarify, your client's property is adjacent to the conservation district?

Mr. Strauss: It is in the conservation district. In fact, it's in between the two of the parcels we're talking about. So were directly affected by the Board decision.

Chair Thielen: Any other questions for Mr. Strauss. Thank you. Mr. Vitousek would you like to come up to make your presentation?

Mr. Vitousek: The basic reason for the petition to deviate from conditions was really to allow the Board and to request the Board re-evaluate this particular condition. It's our view that the condition as it is written is vague, ambiguous and over broad and really un-enforceable. The condition as written says there can be no rental use of these properties and no commercial use. And as we've discussed what was submitted to the Board, the regulations don't define rental anywhere, they don't define vacation rental anywhere, they only define commercial. And commercial is defined in a way that really doesn't, if I read the definition, really doesn't seem to include renting a single family residence. I think just the discussion earlier in the Board today shows that there really isn't clarity in terms of what this condition means and what it prohibits.

The Department has not attempted to enforce the condition against long term rentals in Haena even though they're well aware that there are many long term rentals including people who will testify later today. And so what the Department has done has interpreted this section to where it says no rental use to mean no vacation rental use. That's they're own interpretation of the rule. And so what we are seeing is that, and they've gone and served these cease and desist orders on those owners who have a condition in their permit prohibiting rental use who allegedly used it for vacation rental use. Not just all rental use. And they didn't serve people who have a no rental condition could do long term rentals. And they didn't serve people who have no condition who do vacation rentals. In other words, they're admitting that there is nothing in the rules, there's no rule or statute that prohibits rental use or vacation rental use. There's just a condition that's been put in the permits.

Member Pacheco: Now you just said that they didn't serve people who didn't have the condition in their permit that are doing...

Mr. Vitousek: Vacation rental, yeah.

Member Pacheco: Are you saying there are people who have...

Mr. Vitousek: I'm saying there are people in that community who do not have...

Member Pacheco: In the conservation district.

Mr. Vitousek: That's correct. Yes. Who are doing vacation rentals, but who don't have a condition in their permit and so they weren't served a cease and desist order because there's no law that prohibits it. It's just a condition in the permit. In other words, what they're saying is you violated a condition in the permit. Not you violated a statute or rule because there is no statute or rule that prohibits this. And so what we are saying if you are going to do it based on a condition the condition has to be clear, definite, specific and consistently enforced. At the time that we filed this petition they've been served cease and desist orders there have been no determination by the Department that they are in violation ever. They haven't gone through any enforcement proceedings and made a finding. And so what we are trying to do is rather than address solutions that would affect all conservation district use permits that have this condition we're trying to be specific to this situation and specific to Haena. And trying to ask the Board to change the condition in a manner that makes it specific, makes it understandable, makes it enforceable and applies only to Haena which the Department has recognized is different from other conservation districts. And so rather than go into litigation and declaratory action or contested case or enforcement action what we are trying to do is to create a vehicle where the Board can design a condition that is reasonable, its clear, that its enforceable and do it without having to change your rules. In other words, without having to go through the process of rule making because, again, it's only the condition; it's only the violation of the condition that's motivating this whole thing. So that's the basis for our request and what we proposed is a rule that is consistent with what the counties are doing to regulate vacation rental use in residential districts on Maui and Oahu and Kauai. We're trying to be consistent with that. And that's because Haena is more like those rural coastal residential areas than it is like a conservation area where there is small isolated parcels in the middle of the forest reserve or on an isolated coastline. And so we're asking that they be treated consistently and that there be some regularity and definition and keep it limited to the specific context of Haena. That's our request.

On the issue of contested case, when I read the rules it really looks to me a proceeding where my clients rights are being determined by the Board, you know. The way I read your contested case hearing rules it seems to me like this would be a matter where there would be a right to a contested case hearing and we have requested a contested case hearing. But because we're trying to make sure that we exhaust all our administrative remedies before we go into any litigation. And while I do that, please don't take it like I want to go into litigation because what we are trying to do or what we've been trying to do is create a dialogue where a condition... and we may not get everything we want. We may get something that just distinguishes between short term rental and long term rental and still prohibit short term rental. That's a possibility. At least then the owners could decide to continue the fight or go to enforcement action or make their own decision. And so we were trying to get in a dialogue that would enable us to narrow the rule so that those people who wanted to continue to vacation rent and fight it could fight it. And the other people could know what their rights are and whether to long term rent and go

forward. Maybe we're successful, maybe we weren't that's the basis of our request. We submitted a draft revision to the rule and thank you for your time.

Member Johns: One question about the DAC action, I think that approach makes sense if there's a contested case or not.

Mr. Vitousek: Well, it might, but the problem with it is...one problem from our perspective is what we are trying to do is keep it limited to the specific context of these clients, again, Haena. If we got into DAC action it might have broader implications so we got to be challenging the validity of the enforceability of that rule. We're not trying to create a statewide issue, we're trying to say Haena is different and just deal with this specific issue. That is the problem I see with it. I guess it's feasible. It's not a good alternative to change a condition. It might be a good alternative to address the enforceability of the rule, the validity of the rule, but it doesn't really address the condition.

Chair Thielen: Mr. Vitousek, bringing up that point, you recognize that you say Haena is different and you're trying not to create statewide implications. One of the things that was raised the last time you came before us is your clients do have the option also, if they wish to pursue it, to go through the Land Use Commission to take this area out of the conservation district because if it is so different and they state more of a urban or suburban area.

Mr. Vitousek: I understand. The problem is this is only 14 out of the 99 property owners in the conservation district of Haena and the application for a district boundary amendment based on a small number of owners may be very problematic. Really, the impedance for a change in district should come from the Office of State Planning or from Department of Land and Natural Resources. It should be part of a general review of the districts. We would be happy to apply for a change in subzone to a special subzone. In fact, we volunteered to do that as part of this process and to make rules on the subzone to be more specific to the conditions at Haena. I think that is a viable alternative.

Chair Thielen: Thank you. We do have four other people signed up to testify. I will let you four select your order.

Bo Blair: Submitted a letter on behalf of the Hanalei to Haena Community Association (HHCA). She introduced herself and read testimony. Because we received this matter on December 8th there was no time to discuss the matter with our entire membership. Therefore the following testimony is that of the HHCA 11 member Board of Directors which unanimously endorsed this testimony at its December 11th meeting rather than the position of the Hanalei to Haena Community Association as an organization. The Board concurs fully with the proposed recommendation of the DLNR/OCCL staff as stated in a 19 page report that was attached to Ms. Dawn Hegger's December 7th letter to Mr. Vitousek that the petition for deviation from conditions should be denied. First in regard to the substance of the matter, the HHCA has consistently submitted testimony to the DLNR in connection with new conservation district use application, CDUA, in which we

have stressed the importance of incorporating conditions that explicitly note the existing prohibition against the establishment of commercial activities such as transient vacation rentals in the conservation district consistent with that position the Board of the HHCA believes that existing prohibitions against commercial activities in the conservation district should remain in place and should be enforced less those prohibitions be rendered meaningless. Second in regard to the process, no CDUA has been filed, no environmental assessment of the petition has been performed and no public hearings have taken place on Kauai on this matter. These important procedural safe guards must not be circumvented should this matter ultimately become more than an action to enforce the explicit conditions of existing CDUA permits. Thank you for your consideration of these comments.

She explained Haena is the least developed and this is nothing new to the owners. They are aware of this (condition). Haena has become a more transient area and these activities have not been enforced.

Member Johns: Who are the members of the HHCA? Are they land owners?

Ms. Blair: We are all community owners.

Member Johns: Are there any people in the association that are not land owners? That might be renters?

Ms. Blair: Oh yes. Renters, tenants, you could have a business, real estate... it's completely open. It's a community association.

Member Johns: There might be renters in Haena?

Ms. Blair: Hanalei to Haena.

Member Johns: There might be people in this association that are supporting this petition that are renters themselves in Haena.

Ms. Blair: Yes. Well, these are Board members.

Member Johns: I know. I'm just asking about the association to your knowledge. Because Randy or Mr. Vitousek earlier said some of the people who are testifying today are renters, they might be long term renters, but they are renters in the Haena conservation district. That's what I'm asking.

Ms. Blair: I don't know anyone today that is a renter who is testifying from the Haena district.

Member Johns: But there might be people in the association that are?

Ms. Blair: Yes, but not testifying today.

Member Johns: Ok.

Caren Diamond: Introduced herself and reported she used to live in the conservation district, but the owner was harassed to not rent it to her anymore. She explained the beauty and how it is threatened by commercial use. The county is going over their vacation rental ordinance and she wanted to clear up some mis-conceptions. It is not legal to rent vacation rentals in Haena right now. The county is trying to clarify through a new ordinance for no more transient vacation rentals in residential lands.

Member Johns: Is it defined as under a month transient rental under the county?

Ms. Diamond: I think the state law has under a 180 days and the county had 180 days, but they might have reduced it to 30 days. So that the areas adjacent to this in Haena that are not part of conservation when they were developed part of their XME permit was clear that they were not to do any vacation rental, no commercial use. And to this day although some of those houses are illegally being used as vacation rentals those conditions still exist.

Another one of the things that was cited was the tax issues. Our county has a lot of tax programs so that if you are a resident living in your house you qualify whether your property is in conservation or ag. land or regular county land, you can qualify for tax exemptions.

The amount of people that come to stay at these vacation rental houses far exceeds the amount of residences that a family would have. So that when you have 12 people that regularly come who don't have any idea of what the resources are or that they shouldn't be walking on the reef or they shouldn't be swimming in this incredibly high wave season. There are a lot of problems. Haena is a coastal hazard area. It's a high wave area. It's a tsunami district. There's no evacuation route for people. There are a lot of issues with granting visitors the ability to come in who don't have the knowledge that residents do.

I ask you to please deny this petition. There should be no commercial use in conservation land. There is a very large community that depends on the resources of Haena different from the land owners who are using it for commercial purposes. We ask you to please preserve Haena and its rich cultural history and not commercialize it.

Member Johns: Would you support rentals of over a month, a year or no rentals at all? How do you define it?

Ms. Diamond: I'm not against long term rentals.

Member Johns: How do you define long term as oppose to transient?

Ms. Diamond: Over a 180 days.

Member Johns: 180 days.

Jeff Chandler: My name is Jeff Chandler. I am a native Hawaiian descendent. Hawaiian family name is Mahuiki. I belong to two hui, one founded by his family for the Haena boating controversy and the other is Hui Maka'ainana o Makana which manage and restore the taro lo'i in Kihei and Haena. He explained who these members are.

I never read about nor had permission on the vacation rentals and can only tell you what I know. And I ask this is what I'm here for. First is the historical part of Haena, the culture...

Chair Thielen: Mr. Chandler, I know you have a long history in this area and that you want to share it with us, but so that you know since you mentioned you haven't read what's in front of the Board today because we can only decide what's been put on the agenda and nothing else.

Mr. Chandler: I understand.

Chair Thielen: A request by the property owners to be permitted a deviation from their permit conditions that would allow them to operate rentals on their property. That's the only thing before us.

Mr. Chandler: I understand that. That's about all I know.

Chair Thielen: Ok.

Mr. Chandler: But what I think is very important is the historical, cultural significance of this place. He presented a map of Haena. This map comes out of the master plan of Haena State Park. That information came from our kupunas naming the specific names on the reefs of Haena. If you look at the names all those names tell you specifically what the most important thing is on that reef at that specific spot. I also work for Historic Preservation Division. I'm the cultural...I've been taking care of a heiau at Kihei for the past 12 years. I can tell you that cultural practice still exists. There is reintroduction of the lua to the native people of Haena. La'au lapa'au is still practiced by his family. That is how culturally significant this area is. Spiritually, he presented a package with a piece of coral, but what is significant is what the person wrote.

Chair Thielen: Mr. Chandler, the Board would like to hear what your position is on the issue before us. We appreciate...

Mr. Chandler: But I think you guys need to know culturally what it means to us before I go on because after that I going tell you what happened to me and my family because of these vacation rentals. It's been years.

Chair Thielen: Maybe we should get to that point.

Mr. Chandler: Madame Chair it's not been years, but generations.

Chair Thielen: Ok, again Mr. Chandler, I'm sorry to do this because I know this is not the environment you would prefer to share more of this information with us, but we do have a room full people here with other agenda items too that also want the opportunity for us to address their issue. I need to ask you to please focus your comments on the matter that is in front of us. And maybe you can give us...

Mr. Chandler: This is it culturally as a native Hawaiian what I present to you this industry has impacted. Yeah? My ancestors no can talk for themselves. The iwi no can come over here and talk for themselves. My mom just passed away. She can't be here to talk for herself. No it's my turn to speak for our place. This is not the first time this has happened to us. This is not the first industry that has done this to us native people. I used to be able to walk any time over the land to go fishing whenever I wanted to. Today, I'm fenced off! I've been treated like a tourist! You make little pathways for me to go fishing! I cannot go fishing because all the tourist takes up all the parking! Because of what industry, the tourism industry, the vacation rental industry we lost our land because of this vacation rental. We were told we couldn't build on our land. We couldn't cut the trees and so we couldn't build! That was the way to stop us from building on our land. And people come buy land from outside and just cut all the trees down and put up the houses and put fences. That's good for me, that's good for my family, that's good for my people that they dig up the iwi! They remove um to save them for whom!? For us? For me? When will I have the opportunity to go and visit that iwi? Will I ever have that opportunity? This is just not in my house. So if you cannot sit down and listen to me, this is generations coming out of me. It's not just me. This is something that I have to live through with my ancestors, my parents they not like me. They probably more like your parents who come out and say nothing. And you got to get rid of the land because the land taxes just go up to the thousands! Our home land, the designation is suppose to protect them. What about the protection of the native people? There is only a few of us own land over there, native of that land. And we live watching these people making money off these places. Fencing us off, stopping us from going to beach through the right-of-way. You know what they do is they put a private road sign and I can take you there and show you the sign, but it is a right-of-way to the beach. They put posts so you cannot park! Some of them pull out the right-of-way sign out so nobody know where stay. I've been fighting most of my life so we can eat off the land because that is the only way we survive and how I've survived. And I'm still fighting. This is something that has happened to Hawaii, not just us. I have witnessed this from Kauai down to the Big Island in different communities. Someday they could come up and tell you so you truly understand. There is not much of us like me, but I cannot sit back and not tell you something you should know that is so important one of the most sacred places of all of Hawaii has been over run not just this industry, other commercial ventures. We're on our way going to the legislature to get help so we can stop all this problem ourselves! It's up to me, up to my people and up to the people of Hawaii to malama the aina. That is what is missing to be responsible. When I come to you I no need to hold you accountable

cause I know I no can. That I know. I apologize and I thank you for allowing me to say my manao. Mahalo.

Wendy Wickman: I represent the Wickman family and we have lived at Haena for 60 years. I'm going to read my statement. In addition to what I wrote, Haena should be a conservation district. The reason it is so beautiful today is because it has been. And it didn't always have 750,000 people going into it. That's been recent in my lifetime. I think that the permits, if you look at why some have restrictions, are probably houses that were built after the visitor population began to impact the area. Maybe I'm guessing there is some way of compromising on use of single family residences because the older homes don't have that restriction. Our family would like to thank the DLNR staff and Dawn Hegger, for their time and hard work in researching this issue and for recommending that the CDUA permanent restrictions be enforced. These property owners knew and agreed to the restrictions against rentals and commercial use of their property when they built or purchased their houses. They knew they were in a limited subzone of the conservation district. The objective of the limited subzone is to limit use and I'm quoting "for natural conditions suggests constraints on human activity" that's why it's a limited subzone. This is very true of Haena. This fragile and beautiful area is unsurpassed and its beauty is undisputed. Its Bali Hai image is in more photos of Kauai than any other. These homes are lucrative rentals for this very reason that they exist in a limited subzone that's protected from excessive development. It seems wrong that a property owner can agree to conditions that make their property valuable in the first place and then turn around and disregard those same instructions. These property owners are wealthy, educated individuals with access to first rate realtors and legal counsel. They knew or should have known about these restrictions on their property when they purchased their property. And they should not be above the law just to make a profit. So for all these reasons we agree to staff's recommendation to deny this deviation from conditions. Thank you.

Leah Suesen: Aloha, my name is Leah Ka'aihue. I'm here before you not only to represent myself, but my generation. A lot of the local people who do live in Haena can't afford to come here. First of all I want to state I thank you for everything that you are doing. I request you deny the petition. She passed out signatures from residents and past residents who were forced out. Many don't know what is going on and will be affected by your decision. I want to say I am a resident of Haena. My parents do own their home. I'm not a renter. I just want to ask you to keep Hawaii's conservation lands for conservation use. We need to enforce the laws and not change them. These conservation land owners have knowingly been conducting vacation rentals, commercial business illegally violating land commission use permits. Some longer than I've lived here. It is an illegal act and they chose to ignore and break conservation laws. Vacation rentals outside the DVA and on conservation lands have a great impact on our local community and native life. Impacts on our local lifestyle, Hawaiian culture, Hawaiian cultural sites, Hawaiian burial sites, Hawaiian legends and mele. Meles that every year many Halau come to share that experience for the Merry Monarch. We are concerned with the use of long term vacation rentals, deterioration of neighborhoods and local style communities, lack of infrastructure and constant increase of land taxes. We are residents 24/7. We live

and work here trying to survive abide by the law. Do not allow these illegal actions to continue. Enforce our conservation laws. Do not change them, enforce them. Some of those names on the petition are original traditional Hawaiian families of Haena and they do take offense to the term Haena Hui Hou. They have the true meaning of Haena Hui and not what they are trying to do. She emphasized Haena is a beautiful place and to visualize these vacation rentals. Think about her generation and the future because what you decide on is very important. Thank you.

Member Edlao: Appreciate her coming here representing her generation.

Member Gon: I to want to laud you for taking the time to come here. It's not easy to come before the State Board and say what is needed to be said. Mahalo for that.

Ms. Suesen: Thank you.

Heidi Guth: I'm the advocate for native rights for the Office of Hawaiian Affairs (OHA). Unfortunately, this is our first hearing on this issue. I wanted to support in part our beneficiaries who came before you today and also to remind the Board of the importance of the conservation district not only in this particular place for the endangered species and the beauty and the natural resources that are there, but the cultural resources which are also natural resources in this area that cannot be simply defined in brief words. I think it was important to hear some of the genealogy of the people who spoke to you earlier today and all of that would have come forward in a CDUA and an EA if such were required. The Office of Hawaiian Affairs generally is against any after the fact sorts of permits that would allow for people to deviate or go against any kind of permitting conditions or regular laws and regulations. We're going to keep with that stand and hope that you follow your bright and able staff. Thank you.

Member Johns: Sam what happens if the Board approves your recommendation? What happens going forward? Assuming that the two gentlemen have asked for a contested case and I guess they would still put in their written request and the AG would work with you to determine if there will be a contested case. Although, our advice has been there isn't one available. What else would happen?

Mr. Lemmo: That sounds reasonable. Based on the advice of the AG we would need to proceed to enforce come January 1st.

Member Johns: There would be no further discussions amongst the parties?

Mr. Lemmo: Not unless they wanted to, but the indication is that they don't want to cease. We told them six/seven months in advance that we would be going to enforcement. We already done some, but we will continue with that effort come the New Year.

Member Johns: What would happen if the Board deferred the action on this matter today?

Mr. Lemmo: Then we would continue to do enforcement on January 1st.

Member Johns: Because in your recommendation part #2 says there has been no EA, there's been no public hearing, if the parties or the applicants agree to file a CDUP or a EA or public hearing would you still pursue enforcement? I'm not sure why you put that recommendation in there?

Mr. Lemmo: It's to illustrate why the deviation should not be granted. We would continue with enforcement.

Member Johns: If we deferred and they pursued that?

Chair Thielen: I think the confusion is the motion is by the petitioner to grant a deviation if we defer it there is no deviation.

Member Johns: Right.

Chair Thielen: The deviation would only take affect if the Board were to support it. Otherwise you would go back to the permit conditions.

Member Johns: I understand. I'm just trying to figure out what the Department is going to do to resolve the issue and what path that might take.

Mr. Lemmo: We gave them six months notice to comply and we told them if they don't comply we will proceed with enforcement responsibilities come January 1st unless someone else orders us to do otherwise.

Member Pacheco: I was intrigued by something that Mr. Vitousek said in that he be given clarification on the permit condition what the nature of the rental is to tighten up that language. That would further or could possibly refine the parties who want to continue this fight. There are certainly people who are only going to stop until they either give the right to do short term vacation rentals or they're told in a legal proceeding that is not going to happen if this Board chooses not to allow that to happen. I don't know if this deviation motion allows us to actually tighten up the language on that permit condition at this meeting to say that the permit doesn't allow transient vacations rentals as defined by 90 days rental agreement or something like that. Allow a long term rental issue, I don't know if that is good enough to clarify who the parties would be going forward because this will go to a contested case hearing at some point, right? Or some kind of court?

Vince Kanemoto: Doesn't the condition also say prohibit commercial use?

Mr. Lemmo: Some do. It's either rental, no rental or no commercial. In some case no rental and commercial because the conditions were applied under different regimes over the past 25 years.

Member Johns: Regarding Board Member Pacheco's question is there going to be any movement from the Department to clarify what does commercial rental (mean). Are you going to make it clear that there is no rental allowed for five years, one year, 180 days?

Mr. Lemmo: Not unless I'm told to.

Member Johns: It seems like an open issue that needs to be discussed or resolved at some point.

Chair Thielen: Clearly the Department would need in moving forward in any enforcement action feel confident that it would be able to prevail that the action that it's saying it's a violation of the permit condition actually does violate those conditions.

Member Johns: Then it would go into the decision making about the pursuit of the enforcement action?

Mr. Lemmo: That is part of the meeting at the AG's office. The deputy AG has told me that we have sufficient...

Member Johns: Wait the enforcement action didn't come from the Board?

Chair Thielen: The Department would need to consult with our attorney to determine which enforcement action to move forward with and that would be on a case by case basis depending upon the factual substance of the investigation and the conditions contained within the specific permits.

Member Johns: Ok.

Chair Thielen: It would come back to the Board if there is a contested case hearing or if there is enforcement that needs to be brought to the Board.

Member Johns: But the particular empathies for these enforcement did not come from a Board action. Once you determine there was a violation then you would bring it to the Board for some sort of determination?

Mr. Lemmo: Right.

Member Johns: And then there would be no continuing discussion of the resolution of the issue then?

Mr. Lemmo: If they came to us and said "Sam, we are not going to rent any longer" then that is the discussion we will have. Without that we are continuing to pursue the enforcement action on a case-by-case basis. And each case will be evaluated on it own merits. You will be presented with at some point a formal action.

Member Johns stated he will make a motion. He didn't think that the case has been made for the deviation, but he is not really comfortable with what is left as an inappropriate way to resolve the situation. Being that it is made and this is what is in front of us he'll approve staff's recommendation.

Member Gon second it.

All in favor. Motion passed.

Unanimously approved as submitted. (Johns, Gon)

Item K-4 Conservation District Use Application MA-3426 to Construct the Proposed Kapalua Coastal Trail Project, Honolua and Honokahua Districts, Kapalua, Maui, Maui Land & Pineapple Company - TMKs: (2) 4-2-004:010, 015, 016, 017, 032, 034

Sam Lemmo representing OCCL gave submittal background. He requested changing on page 20, condition 17 to say "Maui Land & Pineapple will get the prior approval from Department of Transportation (DOT) for the proposed trail alignment. Strike out the part in the conservation district because if it is in the DOT right-of-way then DLNR is not involved.

Tom Schell representing Maui Land & Pineapple Company was here to answer any questions.

Chair Thielen inquired should it be required. Does staff know if a DOT approval is needed?

Mr. Lemmo presumed that.

The Board:

Amendment to staff's condition #17, page 20:

Maui Land & Pineapple Co. will get prior approval for proposed trail alignment. And strike "conservation district" because the department is not involved in a DOT right-of-way.

Unanimously approved as amended. (Edlao, Johns)

Item K-2 After-The-Fact Conservation District Use Application OA-3431 for an Erosion Control Wall, for the Completion of an Unfinished Portion of the Wall, and for On-Going Maintenance of the Wall, along Ka'elepulu Stream, Kailua, Oahu, Mr. Read Spencer - TMKs (1) 4-2-50:75 and (1) 4-2-49:87

Sam Lemmo of OCCL reported on background and no changes to submittal.

Read Spencer, owner, was embarrassed by the condition of the land. He noted he'll lose his house if this isn't approved. He realized he made a mistake while trying to correct the erosion and described his problems with the loss of land and trees. Mr. Spencer understands the conditions of the recommendation and he wants to maintain the wall.

Unanimously approved as submitted. (Schuman, Gon)

Item F-1 Enforcement Action Against Maui Snorkel Charters, Inc. for Damaging Coral within the Molokini Shoal Marine Life Conservation District

Written testimony was received from Thomas Cole.

Dan Polhemus, administrator for Division of Aquatic Resources (DAR), informed the Board on submittal background. Staff recommends the Board revoke Maui Snorkel Charters commercial use permit for one year pursuant to Chapter 190 of the Hawaii Revised Statutes of Title 13, Chapter 31 of the Hawaii Administrative Rules because it is a significant penalty that reflects both the seriousness of the damage and the circumstances associated with this incident. The Board has the option of imposing a fine and assessing fees and costs pursuant with Hawaii Revised Statutes § 187A-12.5(a) of up to \$672,618. At its discretion the Board may want to consider the imposition of a fine in addition to the permit revocation or the imposition of a substantial fine in lieu of the revocation. DAR is amendable to either of these options. Mr. Polhemus noted that the responsible party has sent a representative today and that they contacted him in advance requesting a continuance until January 25, 2008. Given the size of the penalty involved and the relative complexity of the damage assessment DAR is willing to support such continuance at the Board's discretion.

Jeff Straund of Maui Snorkel Charters distributed a revised copy of their letter. He admitted to the accident and requested to defer to January 25th to present their case and position.

Member Edlao requested he would like to get the Coast Guard comments and all the information. But, he doesn't want to keep delaying this. He made a motion to defer to January 25, 2008. Member Johns second.

The Board:

Deferred staff's submittal to January 25, 2008 Board Meeting to obtain Coast Guard's report and/or bring in a Coast Guard representative.

Deferred. (Edlao, Johns)

Recess 1:34 pm

Reconvened 1:40 pm

**Item F-3 Request for Authorization and Approval to Issue a
Papahānaumokuākea Marine National Monument Conservation and
Management Permit to the Monument Co-Trustee Representatives of
the U.S. Department of the Interior, U.S. Fish and Wildlife Service;
U.S. Department of Commerce, National Oceanic and Atmospheric
Administration; and State of Hawai'i Department of Land and
Natural Resources, for Access to State Waters to Conduct
Conservation and Management Activities.**

Written testimony was provided by Marti Townsend.

Dan Polhemus, representing DAR, briefed the Board on the background. Informational briefing covered most of this. Staff recommends approval with set of conditions which are the imbedded special conditions previously approved by this Board. He noted condition number 3 where some management activities involve monk seals. This condition is limiting the very activities staff seeks to pursue and the Board may need to consider this. The U.S. Fish and Wildlife Service have certain concerns with condition 10 which Susan White will speak on. Mr. Polhemus suggested amending condition 3 to say conservation and management activities, except those directly related to management of Hawaiian monk seal, only those activities directly related to monk seals are allowed to continue if monk seals are in the vicinity and active participants.

Member Gon suggested conservation management activities of Hawaiian monk seal present in the immediate vicinity, except as permitted for specific management of Hawaiian monk seals.

Member Edlao asked for clarification of condition 2 regarding subsistence fishing.

Mr. Polhemus replied only for the traditional cultural practices of native Hawaiians. Sustenance fishing is allowed in Federal waters.

Member Edlao conveyed he does not support fishing in any waters.

Mr. Polhemus stated he will convey his position to the Federal management.

Chair Thielen inquired of the conditions on pages 4 and 5 are special conditions attached to these permits. How many special conditions were approved?

Mr. Polhemus acknowledged these special conditions are optional where general conditions are required of all permits. This is the full list.

Susan White representing U.S. Fish and Wildlife Service explained special condition 10 is problematic for them because its one of the things they are specifically requesting which is to be able to access state waters to provide support services for their field stations on the islands. She asked to amend by adding after the comma that says "except

for those directly related to emergency response actions” to add “in field stations supplying support.” She elaborated on these field stations’ activities.

Discussion whether this affects other agencies like NOAA.

Chair Thielen suggested bringing supplemental amendments separately at a later Board meeting because they can only allow so much change in one Board meeting.

Aulani Wilhelm, NOAA supervisor for the monument, noted these conditions were previously approved: 1, 4, 6, 7 and 8. Condition 2 was approved conceptually, but the words were different. It says “fishing is prohibited” and the previous version says “no fishing is allowed.” Condition 3, 5, 9 and 10 were not part of the package from the information that was sent out. She apologized that she didn’t have that information.

Mr. Polhemus explained that staff consistently recommended conditions on monk seal that are actions. This is a staff opinion. It contains all of the previously imbedded and approved conditions that came out of the joint legal team. Staff has recommended several additional special conditions that were warranted.

Discussion over additional special conditions and whether the joint team approved it.

Member Schuman inquired if these general terms and conditions are the same conditions that were attached to last year’s permits or have these general conditions changed.

Mr. Polhemus replied these general conditions are the same. Nothing new on them.

Marti Townsend representing KAHEA – Hawaiian Environmental Alliance explained it’s important for the Board to apply permanent activities language from last year’s permit to this year’s permit. KAHEA echoes the Board’s concern regarding sustenance fishing and encouraged the Board to be strict and not allow fishing in the North West Hawaiian Islands. She requested the Board consider for a daily take log and referred to the incident last year.

Chair Thielen asked Ms. Townsend to briefly explain the distinction between the permit’s language last year and this year.

Ms. Townsend referred to attachment B in her testimony on page 2, part D. She described each of the 4 permitted activities. She noted that NOAA did not sign this permit and went without a manager’s permit last year. KAHEA has met with NOAA and its Ms. Townsend’s understanding that it’s NOAA’s policy to permit separately all research activities.

Member Schuman queried that Ms. Townsend’s handout has 30 conditions. Are some conditions combined with others?

Mr. Polhemus explained last year there were 3 separate permits everyone had to get depending on the research: Fish & Wildlife, NOAA and DAR. These 3 moved to a joint permitting scheme as specified by the MOA. Each permit had its own general and special conditions where some special conditions were becoming general conditions. The lawyers got together and went through all the general and special conditions. These revised fully bedded general conditions came back to the Board, who concurred, voted on them and that is what is in the permit. Everyone, including KAHEA, was in agreement. A set of special conditions went through the same process and those 5 are in this permit. Staff recommended 5 additional conditions in the context of this permit. One is a minor reword. How to deal with those 4 additional special conditions?

Chair Thielen asked if the Board supports all 10 special conditions of the permit. Both Federal partners may have questions about these special conditions. The proposal from KAHEA is this same language included in the permit? Taking the language from the permit approved last year #1-4 under permitted activities, what is DAR's response to that?

Mr. Polhemus replied DAR's response is supporting broader management discretion rather than limited management discretion which KAHEA would propose. That is the combined response of DAR and DOFAW (Division of Forestry & Wildlife). It comes back to how often should there be a discussion about basic management activities. KAHEA's proposal would use up a lot of the Board's time because it's restating a policy that is already in place. If doing research obtain a research permit. If doing management don't need one. The Office of Attorney General recommended not restating the obvious.

Paul Conry, administrator for DOFAW, concerned with listing every activity anticipated because staff can't cover everything and there are contingencies that come up. He noted the State of Hawaii has that broad management authority to take endangered species which involves the stewardship, research study without having to get a specific Fish & Wildlife permit. It is not unusual for management and conservation purposes to be given fairly broad latitude to conduct those.

Chair Thielen stated once a management plan is in place staff could switch to a more functional permit. A concern by the public is without that management plan in place what is the framework about the clear policies of what can or cannot do.

Mr. Conry concerned that for 20 years staff has been doing routine management activities and a new contingency comes in that stops everything. The result would hinder management practices and hurt the resource. Staff wants to continue management practices.

Ms. Townsend clarified KAHEA wanted to ensure there are no oversights in the monument.

Ms. Wilhem described the three conditions. Number 3 which is the best management practice that NOAA NMFS (National Marine Fisheries Service) protective species

recommends for permittees as the best management practice. Number 10 which the Board has heard is Fish and Wildlife's concerns. Regarding 9, on whose signature is going where, is contained within the general condition number 8 which is imbedded and approved by the co-trustee agencies. She referred to the check box from the 12/13/08 briefing and described it. In regards to the refueling provision she'll support what Fish and Wildlife supports.

Discussion regarding conditions and best management practices.

Margaret Akamine of NOAA explained best management practices are attached to the permits to keep permittees out of trouble. This is one of many best management practices. There are laws that also prevent, for example, harassment of marine mammals.

Ms. Wilhem noted all the special conditions have been imbedded by the co-trustee agencies and they want the ability to add special conditions to any future permits. The co-trustees are still working out the process. She referred to last year's meetings and she was concerned that the wording in the testimony/minutes was not in the permit in its entirety. In reference to KAHEA's comment on no management permit, the Fish and Wildlife Service conservation management permit allowed for transient through waters, but not work in the waters. State of Hawaii permit allows for Kure Island activities on land. But, none of the co-trustees had a conservation management activity for "in" water activities with the exception of transient separate from any other permit such as research that was signed. All are assuming responsibility.

Discussion on research activities requiring a separate permit from management permits which is done.

Discussion on monthly activity logs.

Ms. Wilhem clarified that the actual activities outlined in the permit that is issued are based on the application and that this appears to be standard practice for all Board actions, as actual permits are never approved by the Board, but the content of the activities is. The permit was a document developed by the staff after the Board has made its decision. Board members agreed. NOAA is committed to revising the general and special conditions together with the co-managers over time and will keep the Board apprised. She supports making revisions when necessary to enhance management and conservation.

2:40 pm Member Edlao departed.

Miwa Tamanaha, executive director of KAHEA, explained they are not asking for additional special conditions, but how the permitted activities are defined. In absence of a management plan it's too broad. KAHEA wants to specify what management is and what is research.

Chair Thielen suggested that the co-trustees discuss this with KAHEA or other interested parties to come up with language that is mutually satisfactory that defines the distinction

between management activities that are acceptable or have a broad consensus and work towards defining that better. In the absence of having that language in front of us she feels using the language in section 6 provides for some guidance.

The Board:

Amendment to staff's recommendation:

The Board recommends the committee working on the management plan discuss with interested parties to come up with language that is mutually satisfactory that defines the distinction between management activities that are acceptable or has a broad consensus and work towards defining that better. In absence of having that language in front of us, use the language in section 6 for guidance.

Member Gon moved to accept the recommendation of staff with amendments to the conditions as listed keeping as is conditions 1, 2, keep 3 with amended except as permitted for specific management of Hawaiian monk seals, 4, 5, 6, 7, 8, delete 9 and 10 with the amendment of the addition of field station, supply and support. Member Pacheco second.

Unanimously approved as amended. (Gon, Pacheco)

Item F-2 Request for Approval to Add Funding (\$158,155) and Increase Scope of Services of a Research Corporation of the University of Hawaii Stream/Estuarine Studies Project Agreement (Contract No. 51059) in FY08

Dan Polhemus, administrator for DAR, described background.

Board declared they liked the idea.

Unanimously approved as submitted. (Pacheco, Gon)

Item C-1 Subject: Carnegie Institution Contract for the Collection and Analysis of Remotely Sensed Hyperspectral and LiDAR (a Laser Based Data Collection System) Imagery for Wao Kele o Puna, the Kapapala Koa Canoe Log Management Area, and a Portion of Ka'u Forest Reserve.

Item C-2 Subject: Request for Amendment of the Hawaii Invasive Species Contract 53599 to Resolve Conflicting Terms in the Scope of Services and Copyright Ownership by Amending the Special Conditions #26

Paul Conry, administrator for Division of Forestry & Wildlife, informed the Board that there are no changes. He noted staff received comments from OHA on Item C-2.

questioning whether to allow a copyright by an author and a publishing company for the product that is under contract. Staff's analysis is that they believe they are getting a broader circulation of the materials as oppose to posting it to the website. The provision is it will be more readily available. Staff supports this.

Unanimously approved as submitted. (Gon, Schuman)

Item J-1 Request for Approval to Repeal Hawaii Administrative Rule, (HAR), 13-242-13

Ed Underwood representing DOBOR explained what the rule was for and staff will come back to implement the new statutes.

Unanimously approved as submitted. (Pacheco, Schuman)

Item M-1 Modification No. 1 to Lease No. DOT-A-06-0016 U.S. Federal Aviation Administration Kona International Airport at Keahole

Item M-2 Issuance of Direct Lease – Rotor Wing Hawaii, Inc., Lihue Airport, Kauai

Ross Smith representing DOT – Airports gave background on each submittal.

Unanimously approved as submitted. (Pacheco, Gon)

Item K-1 Conservation District Use Application SSBN MA-07-04 for a Small-Scale Beach Nourishment Project (Board Consent for Chair Approval), at Laulea Cove, Spreckelsville, Maui, Cirrus, LLC - TMK: (2) 3-8-2:072

Sam Lemmo representing OCCL reported he has no changes.

Unanimously approved as submitted. (Pacheco, Schuman)

Item D-1 Request to Approve Revised Application and Qualification Questionnaire for Agricultural, Pasture, Business, Commercial, Industrial and Resort Leases.

Item D-3 Consent to Assign General Lease No. S-5824, Andy B. Alfiler and Mary G. Alfiler, Assignor, Andy B. Alfiler and Mary G. Alfiler, and LBD Coffee, LLC Assignee, Kapaa, Kauai, Tax Map Key: (4) 4-6-05:11.

Item D-4 Grant of Perpetual, Non-Exclusive Easement to Francis U. Merriman for Access and Utility Purposes, Waioli, Hanalei, Kauai, TMK: (4) 5-5-08:02, and 5-6-02:01.

- Item D-6** **Consent to Assign General Lease No. S-4640, Michael G. Mentnech, Assignor, to Sunny Stewart and Mya Paw'U, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:23**
- Item D-7** **Sale of Remnant State Lands, Abandoned Railroad Right-of-way to Hilo Meishoin, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-57: portion of 01.**
- Item D-8** **Amend Prior Board Action of June 22, 2007, Agenda Item D-4, Cancellation of Revocable Permit No. S-7174 to J.J. Andrade Slaughterhouse, Inc., and Issuance of Month-to-Month Revocable Permit to Jill J. Andrade dba R.J. Ranch for Pasture Purposes; Kawela and Papaki, Hamakua, Hawaii, TMK: (3) 4-6-02:07.**
- Item D-11** **Issuance of Revocable Permit to King Center, Ltd. for Parking Purposes, Honolulu, Oahu; TMK: (1) 2-3-18:45.**
- Item D-13** **Consent to Assign General Lease No. S-4901, Leina'ala M. Lopes and Carolyn Leina'ala Kahili, Assignor, to Leina'ala M. Lopes, Carolyn Leina'ala Kahili, Wilfred A. Lopes and Darren Kealii Lopes, Assignees, Maunalaha Homesites, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24:12.**
- Item D-15** **Amend Prior Board Action of December 8, 2006, Item D-14, Approval in Principle of an Exchange between the State of Hawaii and Tiana Partners and Hawaiian Humane Society for State-Owned Springing Executory Interest in Land at Niu, Honolulu, Oahu, Tax Map Keys: (1) 3-7-04:01, 02 & 20 and Privately-Owned Land at Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-04:02, and**
- Rescind Prior Board Action of October 28, 1994 Under Agenda Item F-13, Amendment to Prior Board Action of February 12, 1988 (Agenda Item F-24) Relating to an Agreement to Partition Land at Niu Valley, Honolulu, Oahu; Accept Quitclaim to a Portion of Property; Issue Quitclaims to the Remainder of Property; and Set Aside to the Division of Forestry and Wildlife, TMK 3-7-04: 01, 02 & 20.**
- To Reflect Parties' Intent to Exchange Present and Future Interests in Land Situated at Niu, Honolulu, Further Identified as Tax Map Keys: (1) 3-7-04:01, 02, 20 and 21**
- Item D-16** **Rescind Prior Board Action of August 26, 2005, Agenda Item D-13, Sale of Remnant to G&I Watumull Limited Partnership, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-09:274.**

- Item D-20** **Cancellation of Grant of Non-Exclusive Easement Bearing General Lease No. S-5172 to Stanley Chun and Katherine S. Chun and Grant of Term, Non-Exclusive Easement to Gilbert K. Chun and Leialoha K. Chun for Seawall Purposes, Kahaluu, Koolaupoko, Oahu; TMK: (1) 4-7-19:26 seaward.**
- Item D-21** **Sale of Reclaimed Land to the Dorothy Ikeda Family Trust, and Amend the Prior Board Action of November 8, 1963 Under Agenda item F-8, Kaneohe, Oahu, TMK: (1) 4-7-19:78 por.**
- Item D-22** **Grant of Perpetual, Non-Exclusive Easement to Department of Defense, for Civil Defense Warning and Communication Siren Purposes, and Issuance of a Construction & Management Right-of-Entry Permit, Hauula, Koolauloa, Oahu, Tax Map Key: (1) 5-3-001:039 (por.)**
- Item D-26** **Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waikele, Oahu, TMK: (1) 9-4-12:01, 02, 03. 27.**
- Item D-27** **Report of Board of Education Action Regarding Acquisition of Private Lands and Set Aside to Department of Education for Expansion of Haaheo Elementary School, Wainaku, South Hilo, Hawaii, TMK: (3) 2-6-32:01 por. & 27.**

Unanimously approved as submitted. (Pacheco, Gon)

- Item D-12** **Enforcement of Violation of Unencumbered Public Lands for Unauthorized Commercial Activity by Nita Kalamafoni at Duke Kahanamoku Beach, Waikiki, Oahu, TMK: (1) 2-3-37:21.**

Morris Atta of Land Division informed the Board of the background situation. He was not sure why she wasn't there for this meeting because she said she would be there to defer.

Unanimously approved as submitted. (Schuman, Gon)

- Item D-10** **Acquisition of Government Lands and Set Aside to (1) Department of Transportation for Manifested Cargo and Passenger Operations, and (2) Department of Business, Economic Development and Tourism, Foreign-Trade Zone Division for Foreign Commerce, Portion of Kaakaukui, Honolulu, Oahu, TMKs: (1) 2-1-15:por. 09, 19, 15, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 42 & 46.**

Morris Atta representing Land Division spoke to DOT – Harbors and Foreign-Trade Zone to proceed because of the timing concerns. If necessary, staff could come back to amend the Board action.

Chair Thielen explained she wants DOT to amend this because at the last meeting Mike Formby, deputy director for Harbors, presented that they are shifting all harbor activities to language consistent to where it's all maritime related activities. She doesn't want to be in a situation where leases are not in compliance in the future. She requested DOT add an amendment.

Unanimously approved as submitted. (Pacheco, Schuman)

Item L-1 Permission to Hire a Consultant to Update the State Water Projects Plan

Item L-2 Request for Authorization to Hire Consultant(s) and Authorize the Chairperson to Negotiate Agreements with a Consultant(s) to Conduct Hearings and Coordinate Work for the Promulgation of Administrative Rules and Procedures as Required by the "Hawaii Dam and Reservoir Safety Act of 2007," Chapter 179D HRS – Dams and Reservoirs

Unanimously approved as submitted. (Agor, Gon)

Motion to adjourn. (Gon, Agor)

There being no further business, Chairperson Laura Thielen adjourned the meeting at 3:00 pm. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Board of Land & Natural Resources
Secretary

Approved for submittal:



LAURA H. THIELEN
Chairperson
Department of Land and Natural Resources